

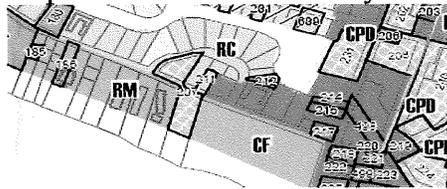
\$ 2,000 -

Leslie Chapman  
Ext. 105

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

### Town of Fort Myers Beach Department of Community Development



Zoning Division

### Application for Public Hearing

This is the first part of a two-part application. This part requests general information required by the Town of Fort Myers Beach for any request for a public hearing. The second part will address additional information for the specific type of action requested.

<b>Project Name:</b> <i>HOLIDAY INN FMB SIGN VARIANCE</i>
<b>Authorized Applicant:</b> <i>JOHN COLLIS</i>
<b>LeePA STRAP Number(s):</b> <i>03-47-24-WZ-00003.0010</i>

<b>Current Property Status:</b>
<b>Current Zoning:</b> <i>COMMERCIAL RESORT</i>
<b>Future Land Use Map (FLUM) Category:</b>
<b>Platted Overlay?</b> <input type="checkbox"/> yes <input checked="" type="checkbox"/> no <b>FLUM Density Range:</b>

Action Requested	Additional Form Required
<input type="checkbox"/> Special Exception	Form PH-A
<input checked="" type="checkbox"/> Variance	Form PH-B
<input type="checkbox"/> Conventional Rezoning	Form PH-C
<input type="checkbox"/> Planned Development	Form PH-D
<input type="checkbox"/> Master Concept Plan Extension	Form PH-E
<input type="checkbox"/> Appeal of Administrative Action	Form PH-F
<input type="checkbox"/> Development of Regional Impact	Schedule Appointment
<input type="checkbox"/> Other (cite LDC section number: _____)	Attach Explanation

**Town of Fort Myers Beach  
Department of Community Development  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931  
(239) 765-0202**

**PART I – General Information**

**A. Applicant:**

Name(s):	JOHN CALLIS		
Address: Street:	6890 ESTERO BLVD.		
	City:	State:	Zip Code:
	Fort Myers Beach	FL	33931
Phone:	239-463-5711		
Fax:	239-463-7038		
E-mail address:	JJCALLIS@AOL.COM		

**B. Relationship of applicant to property (check appropriate response)**

<input type="checkbox"/>	Owner (indicate form of ownership below)	
<input type="checkbox"/>	Individual (or husband/wife)	<input type="checkbox"/> Partnership
<input type="checkbox"/>	Land Trust	<input type="checkbox"/> Association
<input type="checkbox"/>	Corporation	<input type="checkbox"/> Condominium
<input type="checkbox"/>	Subdivision	<input type="checkbox"/> Timeshare Condo
<input checked="" type="checkbox"/>	Authorized representative (attach authorization(s) as Exhibit AA-1)	
<input type="checkbox"/>	Contract Purchaser/vendee (attach authorization(s) as Exhibit AA-2)	
<input type="checkbox"/>	Town of Fort Myers Beach (Date of Authorization: _____)	

**C. Agent authorized to receive all correspondence:**

Name:	KARIA FEAZELI		
Mailing address: Street:	6890 ESTERO BLVD.		
	City:	State:	Zip Code:
	Fort Myers Beach	FL	33931
Contact Person:			
Phone:	239-463-5711 x171 Fax: 239-463-7038		
E-mail address:	KFEAZELI@FORTMYERSBEACHHI.COM		

**D. Other agents:**

Name(s):	SCOTT ROSS - IHG CORPORATE		
Mailing address: Street:	THREE RAVINA DRIVE		
	City:	State:	Zip Code:
	Atlanta	GA	30346
Phone:	770-604-5917 Fax: 770-604-8071		
E-mail address:	Scott.Ross@ihg.com		

Use additional sheets if necessary, and attach to this page.

OTHER AGENTS:

KEN Thompson  
COLITE INTERNATIONAL, Ltd.  
5 TECHNOLOGY CR.  
Columbia, SC 29203  
Ph. 803-935-9044  
FAX: 803-926-8412

**PART II – Nature of Request**

**Requested Action (check applicable actions):**

<input type="checkbox"/> Special Exception for:
<input checked="" type="checkbox"/> Variance for: BUSINESS SIGNAGE Ht of 16'11"
<input type="checkbox"/> Conventional Rezoning from _____ to: _____
<input type="checkbox"/> Planned Development
<input type="checkbox"/> Rezoning (or amendment) from _____ to: _____
<input type="checkbox"/> Extension/reinstatement of Master Concept Plan
<input type="checkbox"/> Public Hearing of DRI
<input type="checkbox"/> No rezoning required
<input type="checkbox"/> Rezoning from _____ to: _____
<input type="checkbox"/> Appeal of Administrative Action
<input type="checkbox"/> Other (explain):

**PART III – Waivers**

**Waivers from application submittal requirements:** Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director’s approval(s) as Exhibit 3-1.

Code Section Number	Describe Item

**PART IV – Property Ownership**

<input checked="" type="checkbox"/> <b>Single owner</b> (individual or husband and wife)
Name: BERT POHLMAN
Address: Street: 6890 ESTERO BLVD.
City: FORT MYERS BEACH State: FL Zip Code: 33931
Phone: 239-463-5711 Fax: 239-463-5717038
E-mail Address: N/A

<input type="checkbox"/> <b>Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)</b>
Attach Disclosure Form as Exhibit 4-1
Attach list of property owners as Exhibit 4-2
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved
For condominiums, timeshare condominiums, and subdivisions, see instructions.

**PART V – Property Information**

**A. Legal Description of Subject Property**

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes:
Subdivision name: <u>FMBH, LLC</u>
Plat Book Number: <u>3452</u> Page: <u>350</u> Unit:     Block:     Lot:
If no:
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

**B. Boundary Survey**

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code, as Exhibit 5-2. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida.
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**C. STRAP Number(s):**

<u>03-47-24-W1-00003,0010</u>
-------------------------------

**D Property Dimensions:**

Area: <u>197,800</u> square feet <u>4.54</u> acres
Width along roadway: <u>1060</u> feet     Depth: <u>460</u> feet

**E. Property Street Address:**

<u>6890 ESTERO BLVD. FORT MYERS BEACH</u>
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**F. General Location of Property (from Sky Bridge or Big Carlos Pass Bridge):**

*property is located along the west side of ESTERO Bird and adjacent to the Gulf of Mexico beaches of Southern ESTERO ISLAND. ONE AND A HALF MILES North of SAN CARLOS PASS.*

Attach Area Location Map as Exhibit 5-3 ✓

**G. Property Restrictions (check applicable):**

There are no deed restrictions or covenants on this property that affect this request.

Restrictions and/or covenants are attached as Exhibit 5-4

A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

**H. Surrounding property owners:**

Attach list of surrounding property owners (within 500 feet) as Exhibit 5-6

Attach two sets of mailing labels as Exhibit 5-7

Attach a map showing the surrounding property owners as Exhibit 5-8

**I. Future Land Use Category: (see Comprehensive Plan Future Land Use Map)**

Low Density  Marina

Mixed Residential  Recreation

Boulevard  Wetlands

Pedestrian Commercial  Tidal Water

Is the property located within the "Platted Overlay" area on the Future Land Use Map?  Yes  No

**J. Zoning: (see official zoning map, as updated by subsequent actions)**

RS (Residential Single-family)  CM (Commercial Marina)

RC (Residential Conservation)  CO (Commercial Office)

RM (Residential Multifamily)  CB (Commercial Boulevard)

VILLAGE  SANTINI

SANTOS  DOWNTOWN

IN (Institutional)  RPD (Residential Planned Dev.)

CF (Community Facilities)  CPD (Commercial Planned Dev.)

CR (Commercial Resort)  EC (Environmentally Critical)

BB (Bay Beach)

**PART VI – Affidavit**

**Application Signed by Individual Owner or Authorized Applicant**

I, JOHN CALLIS, swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data, or other supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

[Handwritten Signature]  
Signature

JOHN CALLIS  
Typed or Printed Name

State of FL  
County of LEE

The foregoing instrument was sworn to (or affirmed) and subscribed

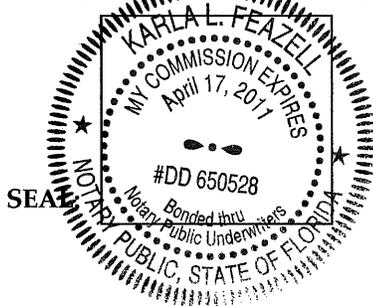
before me this 3/24/11 by JOHN CALLIS  
(date) (name of person under oath or affirmation)

who is personally known to me or produced  
(type of identification)

as identification.

[Handwritten Signature]  
Signature of Notary Public administering oath

KARLA L. FEAZELL  
Typed or Printed Name



**EXHIBIT 4-1  
DISCLOSURE OF INTEREST FORM**

**STRAP#**

Attach additional sheets in the same format for each separate STRAP number in the application if multiple parcels with differing ownership are included.

1. If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address	Percentage

2. If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address, and office	Percentage

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

3. If the property is in the name of a TRUSTEE, list the beneficiaries of the trust and the percentage of interest.

Name and Address	Percentage

4. If the property is in the name of a GENERAL PARTNERSHIP or LIMITED PARTNERSHIP, list the names of the general and limited partners with the percentage of ownership.

Name and Address	Percentage

5. If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, regardless of whether a Corporation, Trustee, or Partnership is involved, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners, and their percentage of stock.

Name, Address, and Office (if applicable)	Percentage

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

6. If any contingency clause or contract terms involve additional parties, list all individuals, or officers if a corporation, partnership, or trust.

Name and Address


For any changes of ownership or changes in contracts for purchase subsequent to the date of the application but prior to the date of final public hearing, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Signature \_\_\_\_\_  
Applicant  
\_\_\_\_\_  
Printed or typed name of applicant

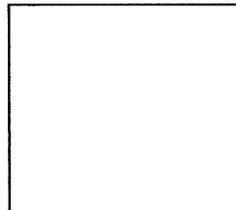
STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (or did not) take an oath.

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Typed or Printed Name of Notary

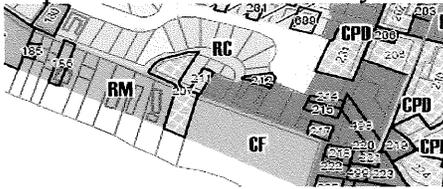
SEAL:



Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**Town of Fort Myers Beach**  
Department of Community Development



Zoning Division

**Supplement PH-B**

**Additional Required Information for a  
Variance Application**

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

<b>Case Number:</b> FMBVAR2011-0002
<b>Project Name:</b> HOLIDAY INN FMB SIGN VARIANCE
<b>Authorized Applicant:</b> JOHN CALLIS
<b>LeePA STRAP Number:</b> 03-47-24-WZ-0000.3-0010

<b>Current Property Status:</b>	
<b>Current Zoning:</b> COMMERCIAL RESORT	
<b>Future Land Use Map (FLUM) Category:</b>	
<b>Comp Plan Density:</b>	<b>Platted Overlay?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
30-153	Permanent identification signs in commercial areas

Complete the narrative statements below for EACH variance requested.

PART I  
Narrative Statements

Request for variance from 30-153 (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:

CODE limits to \_\_\_\_\_ - 32 overall  
with overall height of 5'0.

Reasons for request

Explain why the variance is needed:

1. MAINTAIN COMPLIANCE with Holiday Inn brand requirements.
2. MAINTAIN BRAND AWARENESS that was established on Fort Myers Beach since 1969.

**Explain the possible effect the variance, if granted, would have on surrounding properties:**

BRAND AWARENESS

**Explain the hardship (what is unique about the property) that justifies relief from the regulation:**

BRAND FLAG HAS BEEN A LANDMARK SINCE 1969  
RELATING TO DIRECTIONS AND ALSO GUEST RECOGNITION



June 30, 2011

Leslee Chapman  
Zoning Coordinator

Town of Fort Myers Beach  
2523 Estero Blvd  
Fort Myers Beach, FL

Re: Application by FMBH, LLC d/b/a Holiday Inn at Fort Myers Beach for zoning variance

FMBH, LLC has submitted an application for a zoning variance requesting approval of a replacement pedestal sign in front of the Holiday Inn at Fort Myers Beach, hereinafter "FMBH".

In support of such request we submit the following information in accordance with Sec 34-87 Findings of the Code of Ordinances of the Town of Fort Myers Beach.

Sec 34-87 (3)

- a. *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy;*

FMBH has annual room occupancy in the range of 85,000 to 90,000 guests almost all of whom arrive by automobile from outside the community. The majority of guests initially attempt to locate the hotel during dusk or darkness especially during the winter tourist season when occupancy swells and darkness sets in early in the evening.

Pinchers Restaurant which occupies a portion of the FMBH property serves an average of 335,000 to 350,000 people per year.

The year round average daily traffic flow on Estero Blvd in front of FMBH exceeds 12,000 vehicles per day at a speed of 35 miles per hour.

Multiple studies conducted by the University of Pennsylvania under grants provided by the US Department of Transportation have resulted in proposed regulations balancing the need to provide adequate identification for communication and advertising and establish a well maintained and attractive community while recognizing the importance of signage height, size and location in traffic safety matters.

These studies have incorporated traffic speed, traffic counts, signage size and height as well as variable driving conditions in order to develop guideline characteristics which further the interests of public safety and the needs of motorists where signs are viewed

from a street or roadway with the intent of correlating the relationship between signage and traffic accidents.

Studies indicate that on-premises signs in a neighborhood commercial area should have a height of 26' at 30 mph and 30' at 35 mph to permit adequate visibility to drivers and permit them to identify the sign and decelerate for entry to the property. Proper identification under traffic conditions, especially with new comers to the Town drastically reduces the potential for traffic accidents resulting from quick stops or numerous U-Turns to return to the business location.

The exceptional or extra ordinary conditions that exist with regard to FMBH include the fact that the guests of the Holiday Inn are almost exclusively non-residents of the area, driving on an unfamiliar roadway, on a heavy volume single lane roadway with a majority of these guests first seeking the location after dark.

In case of the FMBH property it should be noted that a drainage swale of approximately 20' in width exists along the road right of way requiring that signage be set back a substantial distance from the roadway creating an additional extraordinary circumstance on this property.

The existing sign is 30' tall and has been in existence since 1969. The size and location of the sign has had a substantial impact on the current traffic safety in the Town because it does permit adequate visibility to drivers.

At a meeting of the Town Historical Committee more than a dozen residents appeared to state that the existing sign was an important local landmark which was used in providing directions to friends and visitors. The existing sign was designated an historical landmark by the committee.

Will it take the death of or serious injury to one or more people to recognize the importance of signage size and height to visitors to the community?

- b. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question;*

The applicant is being required to update its existing sign by the Holiday Inn corporate franchisor in order to remain in compliance with their franchise agreements. The applicant has attempted to obtain franchisor approval to retain the existing sign but was denied because the franchisor has stated that all signage worldwide must comply with the new signage requirement.

- c. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;*

The variance requests a sign that is 16' in height and 12'2" in width. This height is substantially less than studies have shown to be important for traffic safety but is thought to be the minimum height to continue to provide enhanced safety over the height and size required by the current code; and also permit the sign to continue to serve as an identifying landmark desired by local residents while still providing adequate location identification to out of area guests.

*d. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare;*

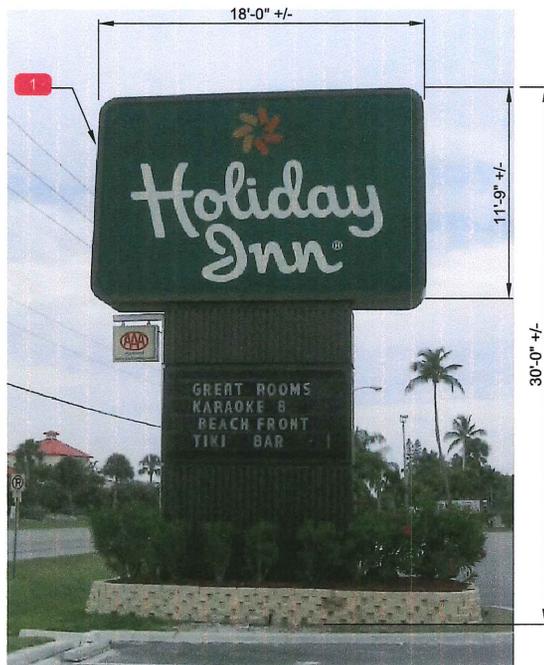
The height of the sign requested by the variance is a substantial reduction in the height of the existing 30' sign which was determined to be a landmark in the community and a benefit to the neighborhood by the Town Historical Committee with the support of local residents. A reduction in the height of the existing sign could not be found to be injurious to the neighborhood or detrimental to the public welfare.

Further, as a result of approval of the variance, the height of the sign will substantially enhance out of area driver recognition of the location of the Holiday Inn with a resulting benefit to the public welfare by reduction in the potential for serious accidents or death to both neighborhood and out of area population seeking to locate the Holiday Inn for a visit and for those who have for more than 40 years used its signage as a local landmark when providing direction to others.

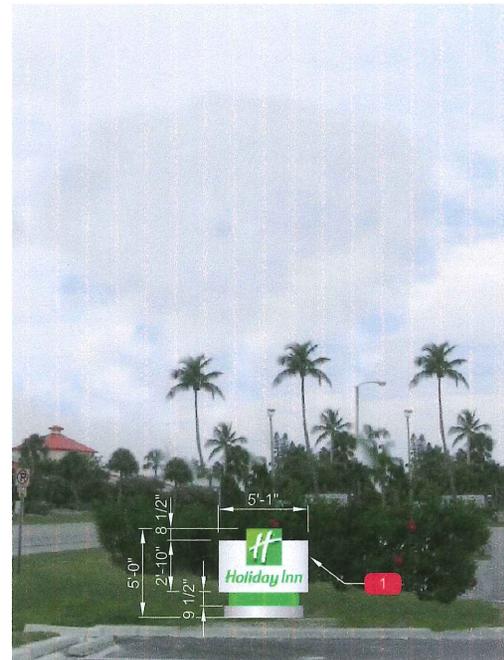
*e. That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

The FMBH property, together with several other properties in the Town of Fort Myers Beach, is unique because it is a destination most often sought out by out of area drivers who are not familiar with the location of local establishments. Other types of retail establishments, such as grocery stores, restaurants and churches are most often sought and used by local residents who become familiar with their location and are not as subject traffic safety issues resulting from significant traffic counts on a two lane road while attempting to identify and a stop at an unknown destination resort.

MEETS TOWN CODE

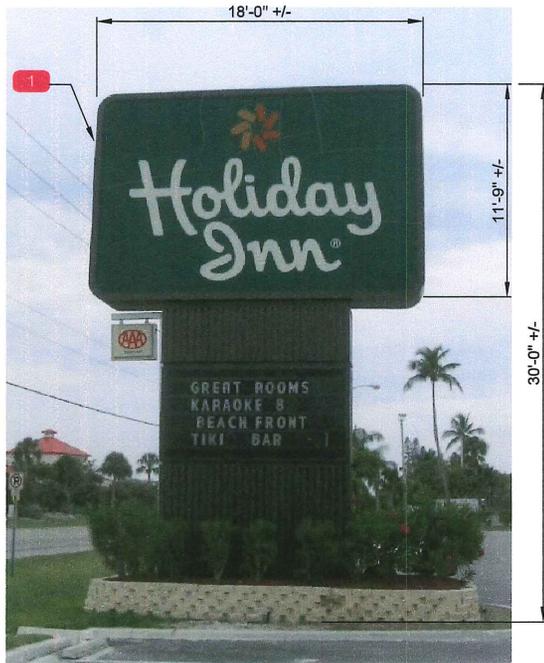


Existing Double-Faced Internally Illuminated HI-18 Pylon Sign  
(Approx. 212 sq. ft.)

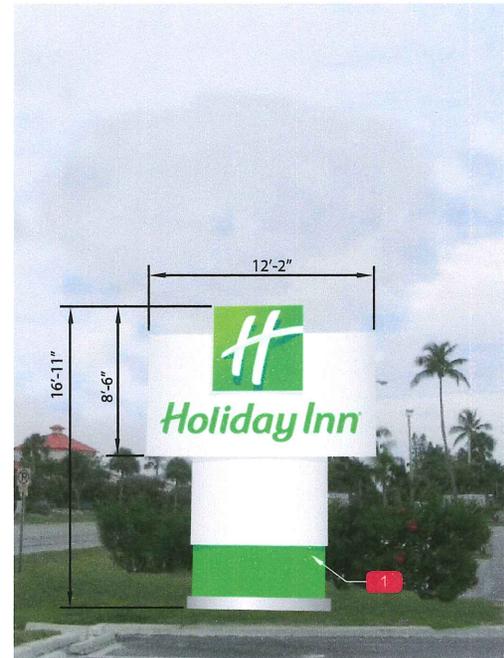


Proposed Custom Double-Faced Internally Illuminated Monument Sign  
(16 sq. ft.)

# VARIANCE Request



Existing Double-Faced Internally Illuminated HI-18 Pylon Sign  
(Approx. 212 sq. ft.)



Proposed P-92-16 Double-Faced Internally Illuminated Monument Sign  
(92 sq. ft.)



# Town of Fort Myers Beach

DEPARTMENT OF COMMUNITY DEVELOPMENT  
STAFF REPORT

**TYPE OF CASE:** Sign Variance  
**CASE NUMBER:** FMBVAR2011-0002  
**LPA HEARING DATE:** July 12, 2011  
**LPA HEARING TIME:** 9:00 AM

## I. APPLICATION SUMMARY

Applicant: FMBH LLC  
Request: A Variance from Sections 30-153(b) and 30-154(c)  
Subject property: See Attached *Exhibit A*  
Physical Address: 6890 Estero Boulevard Fort Myers Beach, FL 33931  
STRAP #: 03-47-24-W1-00003.0010  
FLU: Mixed Residential (MR)  
Zoning: Commercial Resort (CR)  
Current use(s): Hotel/Motel

### Adjacent use, zoning and future land uses:

North: Sandarac I Condominium  
Residential Multifamily (RM)  
Mixed Residential

South: Sand Caper Condominium  
Residential Multifamily (RM)  
Mixed Residential

East: Estero Cove Condominium

Residential Multifamily (RM)  
Mixed Residential

West: Beach  
Environmentally Critical (EC)  
Recreation

## **II. BACKGROUND AND ANALYSIS**

### **Background:**

FMBH LLC, the Holiday Inn, has applied for a variance and relief from Section 30-153(b) and Section 30-154(c) of Chapter 30 – Signs of the Town of Fort Myers Beach Land Development Code.

In September 2008 the applicant requested and was granted by the Local Planning Agency, who was, at that time, the final decision making body for such cases, landmark designation for their existing sign. The Local Planning Agency (LPA) resolution and meeting minutes from this decision are attached as *Exhibit B*.

In December 2010, the applicant applied for and was denied a sign permit (see attached *Exhibit C*). At that time, it was determined that the proposed new graphic for the sign would violate the sign's landmark designation as granted by the LPA in September of 2008.

On April 18, 2001 Town Council adopted amendments to the sign ordinance (11-01) which became effective immediately upon adoption. The amendments included an amortization provision requiring that all non-conforming signs come into compliance by December 31, 2011.

Between December 2011 and the time of application (May 2011) Staff had numerous discussions with Karla Fezell, General Manager, and John Callis, Principle Correspondent, both on the phone and in person, explaining the options available for modifications to the existing sign and requirements for a new sign on the subject property. In those conversations Mr. Callis and Ms Fezell indicated to Staff that the impetus for modifications to the subject property's sign was coming from their corporate franchisor, who was implementing a franchise-wide new sign package. Their compliance was required in order to maintain their franchise. Staff attempted to find a solution that would comply with Town code and the applicant's franchise agreement, but were unable to and the applicant decided to apply for a variance.

### **Analysis:**

The section of Chapter 30 that sets forth the sign face allotment per commercial establishment per parcel is as follows:

**Section 30-153(b) Commercial uses in commercial zoning districts.** All signs located in commercial zoning districts, except for those signs identified as exempt signs in 30-6 and temporary signs in 30-141, shall comply with the following sign area limitations.

(1) For a parcel of land containing one (1) or two (2) business establishments each separate business establishment shall be allowed a maximum of thirty-two (32) square feet of sign area.

(2) For a parcel of land containing three (3) or more business establishments, each establishment shall be allowed a maximum of sixteen (16) square feet sign area. An additional thirty-two (32) square feet of sign area may be utilized to identify the commercial development.

(3) The maximum sign area provided herein may be allocated among a combination of one (1) or more monument signs, projecting signs, and/or wall signs.

The subject property is, therefore, entitled to 32 square feet of sign face area to advertise the Holiday Inn. This sign area can be allocated among a variety of different signs, provided that the total sign face area does not exceed 32 square feet.

Should the applicant choose to allocate any or all the sign face are to a monument sign, then the provisions in Section 30-154(c) apply.

**Section 30-154(c) Monument signs may be elevated provided that the bottom of the sign is no more than eighteen (18) inches above the highest adjacent grade. The maximum height of a monument sign is five (5) feet.**

As part of their supporting documents, the applicant has provided two graphics that are attached hereto as *Exhibit D* and *Exhibit E*. *Exhibit D* illustrates a comparison between the applicant's existing legal non-conforming landmark-designated sign and what is currently permitted by Chapter 30. Please be advised, however, that the totals for sign face are incorrect on the applicant's exhibit. Per Section 30-153(b)(1) the applicant is entitled to a full 32 square feet of sign face. *Exhibit D* only illustrates 16 square feet. *Exhibit E* compares the applicant's existing legal non-conforming landmark-designated sign and their proposed new sign.

Findings and Conclusions:

Using the five factors described in LDC Section 34-87(3) as a guide, Staff recommends the following findings and conclusions:

- a. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a *de minimis*

*variance under circumstances or conditions where rigid compliance is not essential to protect public policy;*

The applicant states in their supplemental letter (attached as *Exhibit F*) that the ‘exceptional or extraordinary circumstances’ include out-of-town patrons, a heavy volume two-lane roadway (Estero Boulevard) servicing the subject property and a drainage swale that requires a further setback from the edge of the road (Estero Boulevard). Estero Island and the Town of Fort Myers Beach is a destination location for countless visitors and guests and as such out-of-town patrons are not unique to the subject property. Further, Estero Boulevard is the only road that connects the island and numerous other commercial locations are faced with the same high-volume road and drainage swale setback circumstances. This is not unique to the subject property. Therefore Staff finds that there **are no** exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property that would impede their ability to meet the sign code requirements.

- b. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*

The sign on the subject property has been in the same location for over 40 years and was granted landmark designation by the LPA in September 2008. The applicant indicated to Staff that their need for a new sign is originating from their corporate franchisor, who may pull their franchise if the applicant does not comply with the dictated corporate sign change. Staff understands that it puts the applicant in a difficult position having to adhere to two sets of rules, however Staff is required to review the application based on the polices set forth in Section 34-87 and it is Staff’s opinion there is no reason the Town’s current sign ordinance regulations cannot be met by the applicant.

- c. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

Town Council has already determined, by the passing of the amended sign ordinance, that monument signs meeting the requirements set forth in Chapter 30 are safe for both traffic and pedestrians. Staff cannot support the applicant’s assertion that a variance is necessary for “enhanced safety” since a monument sign that meets the standards set forth in LDC Section 30-153(b) and 30-154(c) would be visible to traffic on Estero Boulevard and does not impede the applicant’s use of their property. Staff therefore finds that compelling the applicant to meet the code requirements will not place an undue burden upon them.

- d. *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

The applicant is requesting relief from the sign height and sign face requirements of Chapter 30 of the LDC. The current sign's height (30' tall) and sign face (212') is more than 6 times more than what is allowed under the current code. The applicant has proposed a new sign that continues to be non-conforming in height and face are but is smaller than the current sign. It is Staff's opinion that there is not a justifiable reason or hardship in existence that would permit the granting of a height and area variance by Town Council. Staff therefore finds that granting the variance **would** be injurious to the neighborhood or otherwise detrimental to the public welfare by allowing one property relief from rules and regulations that all others must adhere to.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

With the adoption of the amended sign ordinance, and the consequent amortization period for conformity, there is the possibility that numerous locations on the Beach will pursue a variance from the amended requirements. However, by the very nature of the recent adoption of the sign ordinance Town Council has already addressed the issue of signs and has made a decision to enact and enforce a uniform sign code. Staff finds that the circumstances of the specific piece of property on which a variance is sought **are** general in nature and therefore do not demonstrate a verifiable hardship.

### **III. RECOMMENDATION**

Staff recommends **DENIAL** of the requested variance based upon the requisite findings and conclusions for granting a variance under LDC Section 34-87.

### **IV. CONCLUSION**

Staff does not feel that the applicant has demonstrated a justifiable or valid reason for Town Council to approve a variance from Chapter 30 of the LDC.

#### **Exhibits:**

- A – Legal Description of Subject Property
- B – LPA Resolution 08-39 & accompanying September Meeting Minuets
- C – SGN10-0014 Denial Letter
- D – Applicant comparison of existing sign vs code required sign size
- E – Applicant proposed new sign
- F – Applicant's supplemental letter

**EXHIBIT A  
LEGAL DESCRIPTION**

All of that portion of the south 460 feet of the North 1060 feet of Government Lot 1, Section 3, Township 47 South, Range 24 East, lying West of Estero Boulevard (S.R. 865), Lee County, Florida, running from the Westerly side of said Estero Boulevard (S.R. 865) to the Gulf of Mexico, less so much thereof, lying West of the approximate Mean High Tide Line of the Gulf of Mexico in March of 1972, as the same is shown and located on survey prepared by Johnson Engineering, Inc., title "Boundary and Partial Topographic Survey - Parcel in Government Lot 1, Section 3, Township 47 South, Range 24 East, Estero Island, Lee County, Florida", dated January, 1987, Project No. 15767, File No. 3-47-24.

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 2008-39

WHEREAS, FMBHC, LLC, the property owner, filed a Petition for Designation of Historically Significant or Landmark Sign for the following sign: "Holiday Inn", pursuant to Section 30-56(b) of the Town of Fort Myers Beach Land Development Code (LDC) and Chapter 13 of the Town of Fort Myers Beach Comprehensive Plan (Comp Plan); and

WHEREAS, the subject property is located at 6890 Estero Boulevard, Fort Myers Beach, Lee County, Florida and the applicant has indicated that the subject property has a current STRAP number of 33-47-24-W1-00003.0010; and

WHEREAS, a public hearing for this matter was legally advertised and held before the Town of Fort Myers Beach Local Planning Agency (LPA) on September 30, 2008; and

WHEREAS, at such hearing, the LPA gave full and complete consideration to the request of applicant, the documents in the file, the standards set forth in Chapter 13 of the Comp Plan and Section 30-56(b) of the LDC and the testimony of all interested persons.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

The LPA determines that the sign **IS** a landmark sign. Accordingly, the LPA **DOES** designate the Holiday Inn sign as a **landmark sign**, pursuant to LDC Section 30-56(b) and Chapter 13 of the Comp Plan.

**FINDINGS AND CONCLUSIONS**

1. The sign:

a) **IS NOT** associated with events that significantly contributed to the broad patterns of Estero Island's history, or

b) **IS NOT** associated with the lives of persons significant in Estero Island's past, or

c) **DOES** embody the distinctive characteristics of a type, period, or method of construction or **DOES** possess high artistic values or represents a significant and distinguishable entity whose components may lack individual distinction; or

d) On an individual basis, the sign does not constitute a significant site, **AND DOES NOT** contribute to the overall significance of a district.

e) The LPA makes the following findings of fact in support of the conclusions reached in this subparagraph 1: the applicant provided evidence of landmark status to the LPA .

2. The sign **DOES** meet sufficient integrity criteria to designate the sign as a landmark sign. It:

- a) **DOES NOT** possess integrity of location; and
- b) **DOES** possess integrity of design; and
- c) **DOES** possess integrity of setting; and
- d) **DOES NOT** possess integrity of materials; and
- e) **DOES NOT** possess integrity of workmanship; and
- f) **DOES** possess integrity of feeling; and
- g) **DOES** possess integrity of association.
- h) The LPA makes the following findings of fact in support of the conclusions reached in this subparagraph 2: the applicant provided evidence of landmark status to the LPA.

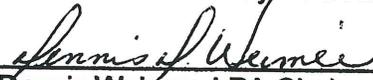
The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Weimer and seconded by LPA Member Yerkes and upon being put to a vote, the result was as follows:

Dennis Weimer, Chair aye  
Evie Barnes aye  
Joanne Shamp aye  
Joe Yerkes

Alan Mandel, Vice Chair aye  
Rochelle Kay aye  
Van Duzer nay

DULY PASSED AND ADOPTED THIS 30<sup>th</sup> day of September, 2008.

LPA of the Town of Fort Myers Beach

By:   
Dennis Weimer, LPA Chair

Approved as to legal sufficiency:

By:   
Anne Dalton, Esquire  
LPA Attorney

ATTEST:

By:   
Michelle Mayher, Town Clerk

**MINUTES**  
**FORT MYERS BEACH**  
**Local Planning Agency Meeting**

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931

**Tuesday, September 30, 2008**

- I. CALL TO ORDER:** The regular meeting of the Local Planning Agency (LPA) was called to order on Tuesday, September 30, 2008, at approximately 10:35 a.m. by Chairman Dennis Weimer. Other members present at the meeting:

Rochelle Kay  
Bill Van Duzer  
Joe Yerkes  
Joanne Shamp  
Evie Barnes  
Alan Mandel

Staff present at the meeting: Dr. Frank Shockey, Interim Community Development Director  
Anne Dalton, LPA Attorney

Also present were members of the public and press

- II. PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was led by Mr. Weimer and recited by all present.

**III. INVOCATION**

**IV. APPROVAL OF MINUTES:**

Chairperson Weimer asked for approval of the minutes of September 9, 2008. Mr. Van Duzer moved to accept the minutes and the motion was seconded by Mr. Yerkes. Ms. Kay pointed out an error in citing of a section of the code and the addition of a name of an attendee; a few minor corrections/additions were noted.

Errors noted; approval was voted and passed unanimously 7-0.

**V. PUBLIC HEARINGS**

**A. Lee County VAR2006-00051): 135 Gulfview lot width variance**

Called to order. Members were polled as to any ex-parte communications: Mr. Weimer did a cite visit; Ms. Shamp did a site visit and viewed the property on line; Mr. Van Duzer did a site visit and stated that he knows the property owners personally; Mr.

Yerkes did a site visit and stated that he employs the same attorneys and has some personal knowledge with owners. Town attorney swore in witnesses.

Ms. Dalton explained that the matter coming forth is a variance matter and that the reports make reference to "vacation" as meaning a vacating of a property and that this does not go before the LPA for determination, but rather goes straight to Town Council. She further noted that if the Council does not approve the vacating, then the variance would be mute.

Ms. Beverly Grady, with the firm of Roetzell & Andress, representing Laverne and Joe Kosinski addressed the LPA. The Kosinskis, who own 135 Gulf Drive Ave., lot 21 and block C at Hyde Park, plat book 7 at page 20 (platted in 1925), were also present. Ms. Grady displayed a copy of the plat, highlighting the twenty feet proposed to be vacated to go before Town Council. She explained that if vacated, it would trigger the need for this variance.

Ms. Dalton noted, for the record, that the materials presented were the same as previously included in the application.

Ms. Grady referred to the exhibit, lot 21 with the twenty foot access drive. She explained that, should the vacation petition be granted, it does trigger the need for one variance, which would be a variance from Lotwith? Further, lot 21 is a triangular lot, with 159 ft. of frontage along the twenty foot drive, and non conforming, presently. Applicants concur with the staff report and request the LPA recommendation of approval, realizing that the lot is a unique shape with unique circumstances, having been platted in 1925 and built in 1974. Approval of the vacation and the variance would, in the applicant's opinion render the lot more conforming with the current code. Ms. Grady further noted that there are no adverse consequences or impacts caused by this and that it is the minimum variance to be requested.

Ms. Kay asked who was responsible for the twenty foot driveway, the Town or the property owner. Ms. Grady replied that the owners have maintained the area for many years, but did not state who the rightful owner is.

Ms. Shamp noted that the property was purchased in June 2005, and asked when the pavers and brick patio were added. Ms. Grady advised that the improvements were in place prior to the applicant's purchase of the property. Ms. Shamp also referred to a structure on the drawings and Mr. Joe Kosinski addressed the LPA to clarify. He stated that the structure referred to is actually a drainage grate, which is part of the Town's drainage system.

Mr. Yerkes asked for clarification as to why the applicant was applying for this and why the applicant is asking for this property to be vacated. Ms. Grady responded that this would move the setback line, permitting the Town to continue to have access by way of easement. Mr. Kosinski added that the existing deck is deteriorated and they would like to replace it, but the stairs are currently in the setback line. Basically, this issue is being addressed in order to replace the deck in a conforming manner.

Mr. Weimer asked for the staff report and Dr. Shockey addressed the LPA. He explained that this specific request is for a variance from the minimum lot dimensions that would be required in the RS zoning district to allow a lot width less than 75 ft. (comes out to about 49 ft.). The house and the lot currently have non conformities which would be

done away with the approval of these requests. Staff recommends approval of the variance under the circumstances that the Town council chooses to approve the requested vacation of the right of way; if the council chooses not to vacate the right of way, then the variance would be a mute issue. Dr. Shockey stated that the overall staff recommendation is approval, with the one condition requiring the easement back to the Town for public purposes; however, if the vacation request is denied by the Town council, then the variance should be withdrawn by the applicant or denied by Town council. Dr. Shockey submitted the staff report for the record.

Mr. Yerkes asked if approval would still protect the Town's rights to protect the issues of impervious surface problems. Dr. Shockey stated that under law, the Town still retains the rights to \_\_\_\_\_ certain private properties, etc. Discussion ensued about permitting.

Mr. Van Duzer stated that the applicant is basically trying to get permission to use the area for a portion of their set back so they can do work on the existing structure, and that staff is recommending approval as long as there is an easement agreement in place. He asked that an addition to the condition be that under no circumstances in the future would any impervious area be allowed in the easement area. Mr. Shockey agreed it could be an additional condition and Ms. Dalton also agreed, stated specific language could be added to the number one condition.

Ms. Shamp commented about island storm water drainage and wondered why this wasn't addressed as a maintenance issue rather than an attempt to vacate an important storm water strip that belongs to the property. Dr. Shockey replied and discussion ensued about how this came to be.

Mr. Van Duzer asked if the lot portion of the land is vacated, and an easement is granted back, if the applicant wishes to put additional surface into that easement, do they not have to obtain approval from the Town to do that. Ms. Dalton replied that they would, because the easement is a commitment not to use that property so the applicant would either be in violation or they would need to seek Town approval. Mr. Van Duzer also asked if the land that is under consideration was previously part of lot 21. Dr. Shockey noted that it was, but very long ago, when the whole subdivision was part of the property of one individual. More discussion ensued regarding the history of the property.

Mr. Mandel asked if the owners of the 18, 19 and the condominium aware of this and if they had any comments. Dr. Shockey stated that he had no knowledge of any problems and that the meeting notice was made in good time. Furthermore, these people will be directly notified via mailings. Mr. Mandel also asked if those same people would have use, if they wanted it, of that twenty-foot space and if they would be party to the easement agreement. Dr. Shockey replied that it depended on what public purposes the easement would be for. Ms. Dalton specified that the process of the vacation of the property would address their rights and there would be a direct mailing to those people regarding the vacation. If the vacation goes forward, the easement back is a matter between the Town and the property owner giving back the easement. At that point, the vacation would transfer ownership of that property to the owner of lot 21, applicant and his wife. In the vacation, the owners of lots 18 and 19 would be losing rights of access.

She further stated that any issues involving the vacation should not be part of the decision making process for the variance. More discussion.

Ms. Barnes asked about lot 14, in Gulfview, and what is there and more discussion about size, etc.

**Open public comment:** none.

**Public Comment closed.**

**Additional comment from applicant:**

Ms. Grady again addressed the LPA, on behalf of applicant. She commented on the focus as being lot width and what the application does, if approved, would permit the lot to be conforming as to square footage and as to depth, as well as solve the setback issues. The issue, regarding vacation, is within the parameters of the Town Council. Restatement of their position, in that no one has come forward from public to complain or be heard, there is also a staff recommendation for approval based on Dr. Shockey's written analysis and previously mentioned points. She agreed to the addition of the aforementioned language suggested by Mr. Van Duzer.

Mr. Yerkes asked if approval, which makes the lot conforming, change the requirements on the part of the applicant, should they desire to put in hard-surface structures on their property? Does the fact that it will now be conforming open doors that are currently closed at the moment because it is non-conforming? Dr. Shockey stated that it may. Ms. Dalton answered "yes" and stated that it would be because the setbacks are different so they would be able to build more, without coming back to the Town then if the current setbacks were to stay in place. Mr. Weimer added that that is the reason that it is written in the resolution so that even if the LPA passes the variance, if the rights are not vacated then this variance is not valid. Ms. Dalton concurred.

Ms. Shamp noted that driving down that street is cumbersome because, getting to the end with nowhere to go and having to turn around in a private driveway. She asked if the easement would then allow the applicant to block the road off so that lot #22 would then have to bear that and what would happen to traffic. Ms. Dalton answered that the easement would be for public purposes. Discussion ensued.

Mr. Weimer closed the testimony portion. Mr. Van Duzer made a motion, as detailed in the resolution 20082008-40, that Town Council approve the requested variance provided that a perpetual easement for the public purpose of the area requested to be vacated must be executed and recorded in the public records prior to the execution of the Town Council resolution. In addition, that this easement include wording that there be no additional impervious structure provided in the easement area, and that the easement agreement include wording allowing the maintenance of the existing ocean harbor wall, allowing easement into that area.

**Findings and conclusions:** *There are exceptional conditions that do justify the granting of this variance;*

*Conditions justify the variance are not the result of actions of the applicant;*

*The variance requested is a minimum variance;*  
*The granting of the variance;*  
*The granting of the variance would not be injurious to the neighborhood;*  
*The condition or circumstances on the specific piece of property for which this variance is sought are not of a general and recurring nature to make it practical to amend the regulations.*

Seconded by Ms. Barnes. Mr. Yerkes spoke up that he is not comfortable passing the resolution, although he will vote in favor. His concern is that the applicant, and then others, to do things to further damage the overall island drainage situation, and not have to go before Town Council to do so. Ms. Shamp agreed with Mr. Yerkes concerns and disagreed with part # 3 (that the variance requested is the minimum that would relieve it). She feels that, should this be passed, whoever presents it to Council will express the LPA's concerns.

Vote taken; motion carried 7-0; motion passed.

Ms. Dalton added a comment for the record to follow up on Ms. Shamp's concern to have a record of the discussion for Town Council's review. She suggested that the LPA make it clear in the record that approved minutes before this issue goes forward to Town Council. Mr. Van Duzer also moved that this not go forward until approved minutes can be available to accompany; seconded by Ms. Shamp and carried 7-0.

Hearing closed on Lee County Var2006-00051-135 Gulfview lot width variance

#### **B. Hearing opened on HDD2008-004 Holiday Inn Landmark Sign Petition**

Ms. Shamp had a site visit; Mr. Van Duzer had a very short drive-by visit; Mr. Yerkes had a site visit; remaining members have driven passed the site many times but no other ex-parte communications were noted. LPA attorney swore in witnesses.

Applicant, represented by John Brugger, Holiday Inn. Applicant presented a background of the sign laws and a specific study by the University of PA, which found that large signs help avoid accidents when drivers are looking for signs. The Ft. Myers Beach location has been in business since 1969 and hosts the Annual Sand Sculpting Contest, as well as many other community events. Applicant presented the Holiday Inn as a cultural part of America since 1952 and stated that the signage that is in place was put there in 1982 and, although the Holiday Inn corporate has changed its signs often since then, the local establishment was permitted to keep the old one to be part of the integral part of the facility. Applicant gave further examples of how tourists and the general public view the historical value of the original Holiday Inn sign and that it should be permitted to remain.

Mr. Weimer questioned that this sign is either "historically significant" or a landmark. Mr. Broger stated that his clients feel that the Holiday Inn sign is a landmark as evidenced by members of the public present to testify. Mr. Weimer questioned the applicant's attorney as to whether the Holiday Inn is seen as the "landmark" or is it the actual sign that is the landmark.

Ms. Shamp how large the sign is and how it conforms to the current ordinance. Dr. Shockey stated that the sign is larger than the ordinance allows but did not have exact measurements.

**Hearing opened for public comment:**

Judy Haataja addressed the LPA and feels that the sign is a vintage sign and that it is certainly an historic landmark, adding that it should be preserved and kept in tact.

John Gerola stated that the signs, in general, are too low and are hazardous as such.

Dana Reed addressed the LPA and distributed a photo of his sign and gave a dissertation of his opinion regarding the sign's historic and nostalgic value.

Bill Gillespie addressed the LPA and stated he is a former sign company owner. He explained the danger of the low height signs, in general, and this sign in particular.

Laurie Lavelle, employee of the Holiday Inn, stated that every day people call and ask how to locate the Holiday Inn and that they would be lost if the sign was not there anymore.

James Valk? Addressed the LPA and advised that the sign is 40 years old and deserving of an "historic landmark" status.

Burt Pullman, owner of the Holiday Inn, addressed the LPA and called attention to the fact that the picture of the sign is in the library. Mr. Pullman said that the Holiday Inn is a good neighbor and provides many events on the beach for the Town. He asked that the LPA grant their request and allow them to keep the sign, making reference to their American flag, which is the tallest flag on the beach.

John Broger reiterated the historical importance of the Holiday Inn, its signage and that the "whole package" has been part of the face of the beach since 1969.

**Public comment closed; open for discussion.**

Ms. Kay commented that she feels the sign is a landmark and has historical value.

Mr. Weimer expressed his ambivalence for this issue because he is not sure whether the sign, or the actual Holiday Inn, holds the historic value.

Mr. Van Duzer agreed that the history of the Holiday Inn is the establishment itself, not the sign.

Ms. Barnes stated that the issue is not with the Hoilday Inn but with the sign ordinance and the parameters within which the LPA needs to work.

Mr. Yerkes commented that the sign is a big part of what Holiday Inn is and believes that there is a compelling argument for this sign as a landmark on the beach. He further commented that the sign is uniquely specific to the history of the beach.

Mr. Weimer made a motion to approve Resolution #2008-39 with the following highlights:

*It is hereby resolved by the LPA of the Town of Ft. Myers Beach, Fl, as follows:*

*“The LPA determines that the sign is a landmark or object of significance in history, architecture archeological, engineering, and accordingly does designate the Holiday Inn sign as a landmark, not historically significant and not both.”*

**Findings and conclusions:** *“The sign is **not** associated with events that significantly contributed to the broad ????; it is **not** associated with the lives of persons significant in Estero Island’s past; **does** embody distinctive characteristics of the type period and method of construction and **does** possess high artistic values or represents a significant and distinguishable entity. On an individual basis, the sign **does not** constitute a sign site and **does not** contribute to the overall significance of the district.”*

*The LPA makes the following findings of fact in support of the conclusions reached in subparagraph 1: “the applicant provided evidence of landmark status; item 2: “the sign **does** meet sufficiently integrity criteria to design the sign as a landmark sign, not historically sign or both; it **does not** possess integrity of the location; **does not** possess integrity of design; it **does** possess integrity of setting; **does not** possess integrity of materials; **does not** possess integrity of workmanship; it **does** possess integrity of feeling and **does** possess integrity of association.”*

The LPA makes these findings of fact in support of the conclusions reached in subparagraph 2, with the additional wordage and applicant’s testimony. Seconded by Mr. Yerkes, with exception of sub-paragraph B, regarding “integrity of design.” Mr. Yerkes opined that the sign does, in fact, possess integrity of design. Mr. Weimer amended the motion to reflect the change to “does possess integrity of design; Mr. Yerkes seconded. Mr. Van Duzer agreed in general, but stated that if this sign, the way it exists presently was to be removed and replaced by a complying sign, it would still have the same criteria but comply with the regulations. Discussion ensued regarding fairness in LPA consideration of signs. Mr. Van Duzer would not support the motion for the existing sign to remain. Mr. Yerkes disagreed and said that if there was a code compliant sign in place of the existing sign, landmark value would disappear. More discussion.

Mr. Mandel asked if approval is granted as a landmark sign, could there be more changes made to it later. Dr. Shockey explained the ordinance allows signs to be approved and replaced with compliant signs and more discussion ensued.

Motion was called and carried 6-1, with Mr. Van Duzer voting in the negative.

Hearing closed for HDD2008-0004 Holiday Inn Sign.

### **C. Public comment – Seasonal Parking**

Mr. John Gerola again addressed the LPA and presented information about the lack of parking spaces on the island. He reported that there is a parking crisis on the island due to development and dwindling space. He requested a workshop to plan and gather information to address the problem.

Mr. Mandel commented that he and Ms. Barnes are in fact working on ways to address this problem.

### **LUNCH BREAK 12:50 PM**

**Reconvene at 1:25 PM**

**VI. ADMINISTRATIVE AGENDA**

**A: LDC Section 6-11 (refuse containers)—Evie Barnes**

Ms. Barnes had provided a report regarding the subject and basically summarized the information. Ms. Barnes pointed out that there was no ordinance until the area became a Town so enforcement is not evenly regulated. She reported that the regulations of the Town conflict with the regulations of the refuse companies, making reference to LDC 34-1171 and 34-1174 regarding the necessity of fences around dumpsters. Residential areas have a setback of 25 ft. and fences must be no higher than 42 inches high to surround a dumpster. Other areas have different setbacks and they may have fences higher than 42 inches, as in areas which are not in the street setback, and they can have fences as high as 6 ft. Ms. Barnes pointed out the difficulty in fair enforcement when there are so many variations in lots and many have been there long before the ordinance was enacted.

Mr. Van Duzer suggested that the LDC be changed to mandate that if there is a commercial dumpster, it needs to be concealed by a fence, shrubs, etc., and it need not meet setback requirements. Discussion ensued, mainly regarding administrative variances and deviations to address the setback issues with refuse containers. Mr. Van Duzer referred to 34-1174, on page 109b, "no building or structure shall be located close to the street right of way line or street easement...accept for.." and then down to number 4 "garbage enclosures as provided for in 611." Dr. Shockey agreed that this is an important provision which allows the property owner to have the garbage enclosure between the building and the street. He also stated that the height of the fence permitted is also stipulated in the area regarding fencing.

Mr. Yerkes questioned why this was brought before the LPA when it seems as though enforcement is the issue more than changing the code. Dr. Shockey explained that section 611 stipulates that "refuse containers that are not moveable...shall be opaquely screened from view from streets and joining properties." He stated that the issues to be addressed and clarified then are when should they become opaquely screened, if they are not already; is there a specific time for compliance; what triggers compliance; several things are not set forth in the ordinance or the code. Ms. Dalton added that the Town is considering a recycling ordinance and space will be an even bigger problem when that is passed. More discussion ensued.

Mr. Yerkes suggested coming up with a timeframe to create a platform for those who view it as impossible to comply to have an opportunity to apply to the LPA for consideration. He clarified to say that the change in the LDC should set a time certain by which time the entire Town would need to be in compliance, with a special stipulation that those who have a genuine hardship come to the Town and they will work together to solve the problem. Discussion about whether the code needs to be changed or if this is strictly an enforcement issue. Mr. Van Duzer opined that the code is what it is and that it should be left alone and enforced; if someone has a problem with any of the sizes, etc., it should be brought before the Town for a solution. More discussion.

Dr. Shockey argued that the code should be changed to set the rule for enclosures of trash areas. Mr. Yerkes and Mr. Van Duzer insisted that the code stay the same and enforcement just be picked up.

Mr. Weimer proposed that the LPA finds that the LDC Section 6-11 is acceptable as written and that if a property owner has a problem with compliance, it should be brought forward for review. More discussion ensued.

Ms. Dalton suggested that Ms. Brown, Code Enforcement, come before the LPA to answer questions. Julie Brown addressed the LPA and was asked if there should be any changes to the LDC under refuse containers. Ms. Brown suggested that the Town consult with Lee County Environmental Coordinator, who deals with commercial properties and dumpsters daily. She also suggested that the LPA and the Town try to help the citizens comply by working with them before trying to enforce the regulations unfairly; for instance, requesting the county change the pick-up day for the beach to Monday instead of Tuesday, since many of the properties are weekend rentals. In addition, she suggested that the Town look into newer, more efficient trash "totes" with tight lids and wheels, which would help bring all residents into compliance. She admitted that, in the case of commercial dumpsters which are not in compliance, the Town has not really enforced the regulation much.

Mr. Yerkes reiterated that there is a code in place, it should be enforced, there is a mechanism for variance so when it cannot be complied with the property owner can come to the Town for variance and LPA considers the elements of the variance application. He said that now these are being administrated in the street. More discussion.

Mr. Weimer asked for a motion for the resolution and Mr. Van Duzer moved to respond to the governing body that the LPA have reviewed chapter 6 and 34, with regard to refuse containers, and believe that the existing wordage is appropriate; seconded by Ms. Shamp. Mr. Yerkes agreed but feel that the LPA should stipulate in the resolution that, in reviewing this code and finding it sufficient in its content, it is clear that the issue of enforcement is the problem, and that enforcement needs to go forward at some date specific; also that the mechanism for variance is the relief mechanism and no other shall be employed, such as the code enforcement officer doing it herself. Mr. Van Duzer accepted the amendment, and Ms. Shamp again seconded. Ms. Dalton read the two pertinent sections of the resolution: *"whereas, at its meeting of September 30, 2008 and following proper notice, the LPA reviewed various issues related to refuse containers as codified in LDC Sec. 6-11 and related matters set forth in LDC Sec. 34-1174...it is hereby resolved by the LPA of the Town of Fort Myers Beach, FL, as follows: the LPA recommends that the existing LDC language is written appropriately and does not require revision, however, enforcement and relief from enforcement mechanisms need to be enforced."*

**Recess for drafting resolution.**

**Meeting back to order at 3:07 PM.**

Resolution 2008-41 as above motioned and seconded. Mr. Yerkes and Mr. Van Duzer objected to some of the wording and Ms. Dalton proposed a revised version regarding the enforcement stipulation. Mr. Van Duzer moved to accept the revision and Ms.

Shamp seconded the motion. Vote taken and carried 7-0.

**B: LDC Section 6-13, 6-14 and 10-255 (flooding issues)**

Scheduling of workshop with staff/storm water engineer of October 21, 2008

Mr. Weimer stated that there should be a few meetings with the engineer before any decisions are made and requested that Kathy Lewis be present.

Discussion regarding who/how to invite.

**C: LDC Section 34-214 (MCP amendment) status review**

Ms. Kay reported that her task was to clarify the administrative amendment, 34-219, to explain whether it is possible to amend a plan that was put forward, as long as the change in the plan was minor, so that it would not be necessary to go before the entire LPA. Ms. Kay found that the "director has the discretion to eliminate unnecessary processing delays that are substantially similar to the prior approval; that are in conformance with all Town regulations and plans," and the addition of "and any and all communications between the applicant and the director shall be subject to the ex-parte communication rule."

The LPA placed this on the agenda for November 18, 2008 to bring forward the proper wording. Motion by Ms. Barnes to close Administrative Agenda and second by Mr. Mandel; carried 7-0. Mr. Yerkes was excused early.

**VII. ADJOURN AS LPA; CONVENE AS HPB:**

Ms. Barnes called the meeting to order at 3:25 PM; all members present, except Mr. Yerkes. Ms. Barnes reported that the committee has decided on a plaque and a letter to be mailed out. Mr. Weimer moved that Dr. Shockey be directed to mail the letters; second by Ms. Shamp; motion carried 7-0. Ms. Barnes mentioned that a local Eagle Scout took on the project to restore the historic cottage and he should be recognized with a type of ceremony soon. Next meeting on October 23, 2008 at 10:00 AM.

A joint meeting was also requested for the Historic Advisory Committee and the Historic Society together with the HPB. Discussion ensued about the meeting.

**TAPES ENDED—NOTHING RECORDED ON TAPE #3**

**VIII. Town Capital Improvements Program (CIP) Items:**

**IX. LPA Member Items and Reports:**

**X. LPA Attorney Items**

**XI. Community Development Director Items**

**XII. LPA Action Item List Review**

**XIII. Public Comment**

Next meeting October 14, 2008 at 10:30 AM.

Adopted 11-12-08  
(Date)

With/Without Changes.

Motion by

Yerkes / Kay

Vote: 7-0

Dennis Weimer  
Dennis Weimer, LPA Chair

From: Jay Lowder <jlowder@signmgmt.com>

To: kfezell@fortmyersbeachhi.com

Cc: jbrugger@forsythbrugger.com, Ross, Scott (IHG) <Scott.Ross@ihg.com>, Shackleford, Bob (IHG-Temp) <Bob.Shackleford@ihg.com>, Brad Jones <bjones@signmgmt.com>

Date: Wednesday, January 20, 2010 12:55 pm

Subject: FMYBE - Historical Sign & IHG

Attachments:

- image001.png (1KB)
- image002.png (900B)
- image007.png (888B)
- image004.png (134KB)
- image006.png (116KB)

EXHIBIT (C)

Karla:

Scott Ross has reached out to me to assist with your sign. He forwarded me a letter from attorney John Brugger that explained the sign's status per the city as being an "historically significant sign."

What I need help on is clarification of the following:

- 1) May we remove the existing pedestal cladding and replace with the new IHG pedestal cladding?
- 2) Is the planter considered part of the sign or may it be removed? The IHG standard is to remove (if it's not protected under the "Historically significant sign" clause.)

I look forward to assisting you with this sign.

Historical pedestal

Current

Proposed



Jim, 2-24-11  
 Carla will be revising her permit for change of copy only  
 Is Refacing an option what can we do?

100%  
 We can Re-Skin and paint the existing sign  
 100%

Jay Lowder

Program Manager

Sign Management Consultants, Inc.

2501 Perimeter Place Drive

Suite 201

Nashville, TN 37214

United States of America

+(615) 238-3705 Direct Line

+(615) 885-1661 General Office

+(615) 238-3733 Fax

This guy wants us to buy New Sign SMC

- will provide Drawings
- we will take to City
- Bid through vendors
- Vendor will pull permit

FRANK SHOCKEY

Unscrew screw a Pulver  
 - 1 Main Column as 2 Column on each side  
 - Matt Gray



Fort Myers Beach Community Development  
2523 Estero Blvd  
Fort Myers Beach, FL 33931

12/17/2010

Gulf Coast Signs of Sarasota Inc.  
1713 Northgate Blvd.  
Sarasota, Florida 34234  
Fax 941-351-3154

Owner: FMBH LLC  
Site Address: 6890 ESTERO BLVD

Re: Building Permit Application No. SGN10-0014

Dear: FMBH LLC,

The permit and drawings submitted for the referenced project have been reviewed in accordance with the Ft. Myers Beach Land Development Code (L.D.C.), and Florida Statutes (F.S.) as well as other codes and ordinances as adopted by the Town of Fort Myers Beach for zoning, floodplain and environmental sciences. For the reasons listed below, we are unable to approve your plans at this time.

Your application for a permit has been reviewed and denied due to the following:

The new design of the sign submitted would put the sign in a loss of legal nonconformity (Sec. 30-56(c)). The existing sign was granted Designation of Historically Significant or Landmark status under FMB resolution 2008-39 dated 09/30/08.

Please make the corrections and resubmit the application with the necessary information so we can process your application.

**Please note that these comments represent only those of the reviewer signing below. Other comments may be forthcoming, and a re-submittal shall not occur until all reviewer comments are addressed.**

Please note that an application for a permit is deemed to be abandoned 180 days after the date of filing unless the application has been pursued in good faith or a permit has been issued. Therefore, please supply us with the required plans at your earliest convenience.

Please contact me if you have any questions.

Very truly yours,

---

Community Development

MEETS TOWN CODE EXHIBIT D



Existing Double-Faced Internally Illuminated HI-18  
Pylon Sign  
(Approx. 212 sq. ft.)

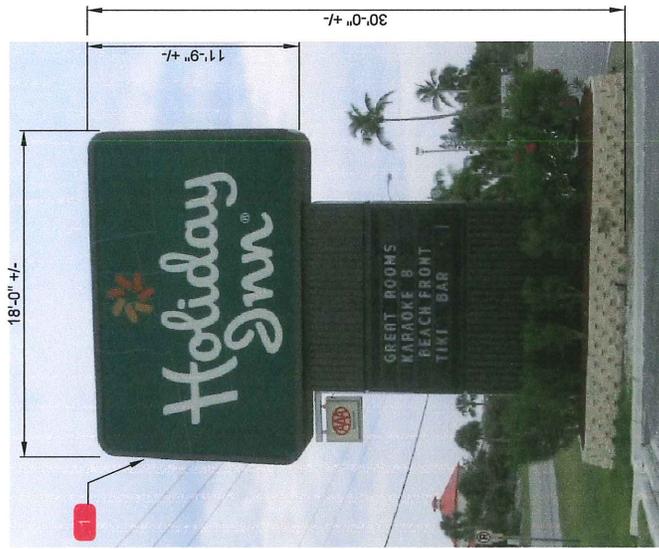


Proposed Custom Double-Faced Internally Illuminated  
Monument Sign  
(16 sq. ft.)

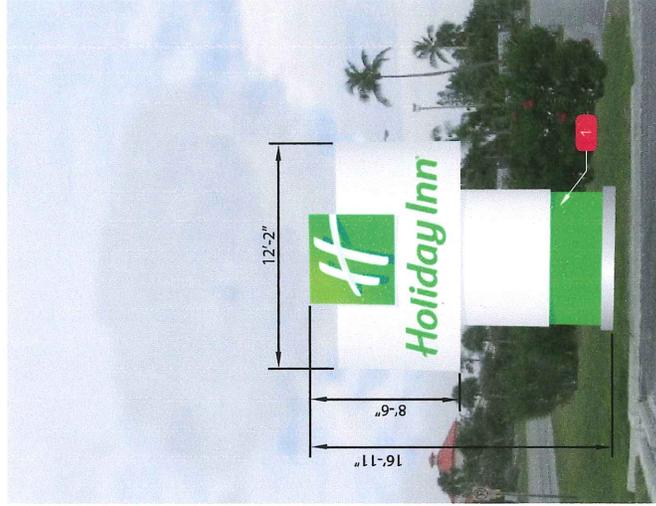
VARIANCE

Request

EXHIBIT E



Existing Double-Faced Internally Illuminated HI-18  
Pylon Sign  
(Approx. 212 sq. ft.)



Proposed P-92-16 Double-Faced Internally Illuminated  
Monument Sign  
(82 sq. ft.)

June 30, 2011

Leslee Chapman  
Zoning Coordinator

Town of Fort Myers Beach  
2523 Estero Blvd  
Fort Myers Beach, FL

EXHIBIT ( F )

Re: Application by FMBH, LLC d/b/a Holiday Inn at Fort Myers Beach for zoning variance

FMBH, LLC has submitted an application for a zoning variance requesting approval of a replacement pedestal sign in front of the Holiday Inn at Fort Myers Beach, hereinafter "FMBH".

In support of such request we submit the following information in accordance with Sec 34-87 Findings of the Code of Ordinances of the Town of Fort Myers Beach.

Sec 34-87 (3)

- a. *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy;*

FMBH has annual room occupancy in the range of 85,000 to 90,000 guests almost all of whom arrive by automobile from outside the community. The majority of guests initially attempt to locate the hotel during dusk or darkness especially during the winter tourist season when occupancy swells and darkness sets in early in the evening.

Pinchers Restaurant which occupies a portion of the FMBH property serves an average of 335,000 to 350,000 people per year.

The year round average daily traffic flow on Estero Blvd in front of FMBH exceeds 12,000 vehicles per day at a speed of 35 miles per hour.

Multiple studies conducted by the University of Pennsylvania under grants provided by the US Department of Transportation have resulted in proposed regulations balancing the need to provide adequate identification for communication and advertising and establish a well maintained and attractive community while recognizing the importance of signage height, size and location in traffic safety matters.

These studies have incorporated traffic speed, traffic counts, signage size and height as well as variable driving conditions in order to develop guideline characteristics which further the interests of public safety and the needs of motorists where signs are viewed

from a street or roadway with the intent of correlating the relationship between signage and traffic accidents.

Studies indicate that on-premises signs in a neighborhood commercial area should have a height of 26' at 30 mph and 30' at 35 mph to permit adequate visibility to drivers and permit them to identify the sign and decelerate for entry to the property. Proper identification under traffic conditions, especially with new comers to the Town drastically reduces the potential for traffic accidents resulting from quick stops or numerous U-Turns to return to the business location.

The exceptional or extra ordinary conditions that exist with regard to FMBH include the fact that the guests of the Holiday Inn are almost exclusively non-residents of the area, driving on an unfamiliar roadway, on a heavy volume single lane roadway with a majority of these guests first seeking the location after dark.

In case of the FMBH property it should be noted that a drainage swale of approximately 20' in width exists along the road right of way requiring that signage be set back a substantial distance from the roadway creating an additional extraordinary circumstance on this property.

The existing sign is 30' tall and has been in existence since 1969. The size and location of the sign has had a substantial impact on the current traffic safety in the Town because it does permit adequate visibility to drivers.

At a meeting of the Town Historical Committee more than a dozen residents appeared to state that the existing sign was an important local landmark which was used in providing directions to friends and visitors. The existing sign was designated an historical landmark by the committee.

Will it take the death of or serious injury to one or more people to recognize the importance of signage size and height to visitors to the community?

- b. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question;*

The applicant is being required to update its existing sign by the Holiday Inn corporate franchisor in order to remain in compliance with their franchise agreements. The applicant has attempted to obtain franchisor approval to retain the existing sign but was denied because the franchisor has stated that all signage worldwide must comply with the new signage requirement.

- c. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;*

The variance requests a sign that is 16' in height and 12'2" in width. This height is substantially less than studies have shown to be important for traffic safety but is thought to be the minimum height to continue to provide enhanced safety over the height and size required by the current code; and also permit the sign to continue to serve as an identifying landmark desired by local residents while still providing adequate location identification to out of area guests.

*d. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare;*

The height of the sign requested by the variance is a substantial reduction in the height of the existing 30' sign which was determined to be a landmark in the community and a benefit to the neighborhood by the Town Historical Committee with the support of local residents. A reduction in the height of the existing sign could not be found to be injurious to the neighborhood or detrimental to the public welfare.

Further, as a result of approval of the variance, the height of the sign will substantially enhance out of area driver recognition of the location of the Holiday Inn with a resulting benefit to the public welfare by reduction in the potential for serious accidents or death to both neighborhood and out of area population seeking to locate the Holiday Inn for a visit and for those who have for more than 40 years used its signage as a local landmark when providing direction to others.

*e. That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

The FMBH property, together with several other properties in the Town of Fort Myers Beach, is unique because it is a destination most often sought out by out of area drivers who are not familiar with the location of local establishments. Other types of retail establishments, such as grocery stores, restaurants and churches are most often sought and used by local residents who become familiar with their location and are not as subject traffic safety issues resulting from significant traffic counts on a two lane road while attempting to identify and a stop at an unknown destination resort.

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2011-008  
FMBVAR2011-0002 (Holiday Inn Sign)

WHEREAS, applicant FMBH LLC has requested a Variance from Section 30-153(b) and Section 30-154(c) of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 03-47-24-W2-00003.0010 and the legal description of the subject property is attached as Exhibit A; and

WHEREAS, the subject property is located at 6890 Estero Boulevard in the Commercial Resort zoning category of the Official Zoning Map and the Mixed Residential category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on July 12, 2011; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-87.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE/DENY** the applicant's request for a Variance from Section 30-153(b) and Section 30-154(c) of the LDC:

**RECOMMENDED FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

- A. There **are/are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, **or** the request **is/is not** for a de minimis

variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

B. The conditions justifying the variance **are/are not** the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted **is/is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

D. The granting of the variance **will/will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.

E. The conditions or circumstances on the specific piece of property for which the variance is sought **are/are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member \_\_\_\_\_ and seconded by LPA Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair	AYE/NAY	Bill Van Duzer, Member	AYE/NAY
Carleton Ryffel, Vice Chair	AYE/NAY	Rochelle Kay, Member	AYE/NAY
John Kakatsch, Member	AYE/NAY	Hank Zuba, Member	AYE/NAY
Tom Cameron, Member	AYE/NAY		

DULY PASSED AND ADOPTED THIS \_\_\_\_\_ day of JULY, 2011.

Local Planning Agency of the Town of Fort Myers Beach

By: \_\_\_\_\_  
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: \_\_\_\_\_  
Fowler, White, Boggs  
LPA Attorney

ATTEST:

By: \_\_\_\_\_  
Michelle Mayher  
Town Clerk